IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

MACA.No. 455 of 2004(C)

OPMV.127/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

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APPELLANT/2ND RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP.BY ITS ASST.ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS/CLAIMANTS AND IST RESPONDENT RESPECTIVELY

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1. K.M.CHERIAN,S/O.VARKEY MATHAI,
   VAKACHERRY HOUSE,PAROLICKAL,
   ATHIRAMPUZHA P.O.,ETTUMANOOR.

2. R.K.BABU,S/O.LATE KURUPAIAH,
   NO.16,MIG-II,
   MAIN ROAD,10TH CROSS,
   BOGADI IIND STAGE,
   MYSORE - 570 001.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

M.A.C.A.No.455 of 2004

Dated this the 22nd day of January, 2007

JUDGMENT

The Motor Accidents Claims Tribunal, Kottayam passed an award in favour of the first respondent for Rs.31,250/- as compensation directing the appellant herein, the second respondent in the claim petition, to deposit the amount with interest at 9% per annum from the date of petition till the date of deposit.

2. The accident occurred on 18.12.1997 at 1.30 P.M. The first respondent herein, while he was walking along the road, motor cycle bearing registration No.KA09/Q-4989 driven by the second respondent herein knocked him down and he sustained injuries. Compensation of Rs.1,43,750/- was claimed.

3. The appellant, second respondent before the Tribunal, contended that the vehicle was not insured at the time of the accident and therefore the appellant is not liable to pay compensation. It was also contended that the vehicle was insured on 22.12.1997 and the second respondent herein issued

a cheque for the premium amount. The Tribunal considered the question whether the insurer will be liable to pay the compensation amount even if the cheque issued towards premium amount was dishonoured. The Tribunal referred to the decisions relied on 2000 SCC (Crl) 601 and 2000(1) KLT short notes 79 case No. 95 and held that the insurer would be liable in such case. The contention put forward by the learned counsel for the appellant was that on the date of the accident, namely, 18.12.1997, the vehicle was not insured at all and that the appellant insurance company is not liable to pay compensation. What is discussed in the judgment is not the contention raised by the appellant. The discussion in paragraph 8 of the award is on the question whether the insurance company would be liable if the cheque issued by the insured towards premium amount was dishonoured. The question whether there was a policy at the relevant time, namely, the date of the accident was not at all considered by the Tribunal.

4. In the result, the appeal is allowed and the award as against the appellant/second respondent shall stand set aside.

The Tribunal shall consider afresh the question whether there was valid policy of insurance on the date of the accident and whether the appellant is liable as the insurer, after affording an opportunity to all the parties to adduce such other evidence as they may wish to adduce. It is made clear that the award as against the appellant alone, who was the second respondent before the Tribunal, is being interfered with in this appeal. In other words, the finding on issue No. 1 and the finding on issue No.2 as to the quantum of compensation and the liability of the first respondent in the O.P.(MV) to pay compensation are not interfered with.

M.A.C.A. is allowed to the extent indicated above.

K.T.SANKARAN,
JUDGE

csl